

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 901 North First Street, Room 400 <div style="text-align: center; font-size: 24pt; font-weight: bold;">STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 5/22/02 Item 3.c.	
	File Number CP01-12-107	
	Application Type Conditional Use Permit	
	Council District 9	
	Planning Area Cambrian-Pioneer	
	Assessor's Parcel Number(s) 421-05-076	

PROJECT DESCRIPTION			Completed by: Teresa Estrada
Location: Southwest corner of Union Avenue and Woodard Road (3707 Union Avenue)			
Gross Acreage: 0.39	Net Acreage: 0.39	Net Density: N/A	
Existing Zoning: CP- Commercial Pedestrian	Existing Use: Abandoned gas station		
Proposed Zoning: No Change	Proposed Use: Restore facility and re-institute gas station use		

GENERAL PLAN:		Completed by: TE
Land Use/Transportation Diagram Designation Medium Low Density Residential (8.0 DU/AC)		Project Conformance: [X] Yes [] No [X] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING		Completed by: TE
North: Commercial	CP – Commercial Pedestrian	
East: Commercial	County	
South: Commercial	CP – Commercial Pedestrian	
West: Commercial/Single Family Detached Residential	CP – Commercial Pedestrian	

ENVIRONMENTAL STATUS		Completed by: TE
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on <input checked="" type="checkbox"/> Negative Declaration adopted on May 8, 2002		<input type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY		Completed by: TE
Annexation Title: Parker No. 5		Date: December 27, 1957

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input type="checkbox"/> Uphold Director's Decision	Date: _____ _____	Approved by: _____ <input checked="" type="checkbox"/> Action <input type="checkbox"/> Recommendation

APPLICANT	OWNER/DEVELOPER
Mehdi Sadri A.F. Construction 4990 Speak Lane #280 San Jose, CA 95118	Azim Modarsi Sherwin Petroleum, Inc. 2211 Monroe Street Santa Clara, CA 95050

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: TE

Department of Public Works

See Conditions of Approval.

Other Departments and Agencies

None Received.

GENERAL CORRESPONDENCE

None Received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Azim Modarsi, for Sherwin Petroleum, is requesting a Conditional Use Permit to allow a remodel of an abandoned gas station and reinstitution of its use on a 0.39 gross acre site at the southwest corner of Union Avenue and Woodard Road. New gas station proposals or expansions in the CP-Commercial Pedestrian Zoning District that are located within 150 feet of a residential use require a Conditional Use Permit. The existing gas station, originally built in 1952 has been vacant for approximately four years. Both the existing building and overall site is in substantial disrepair. The site is located in the Camden/Union Neighborhood Business Cluster (NBC), which is one of six areas identified by the Redevelopment Agency demonstrating significant physical deterioration and economic decline. The NBC encompasses several commercial parcels along Union Avenue near the subject site. See analysis for additional discussion.

The subject corner parcel is rectilinear in shape with nearly equal street frontages on Union Avenue and Woodard Road. The site is located adjacent to strip commercial retail buildings to the north across Woodard Road, retail to the south, the Cambrian Park Shopping Center across Union Avenue to the east, and a single-family detached residence converted to a home office use to the west.

Project Description

The applicant is proposing to upgrade the site by repairing the existing 1,117 square-foot building and constructing a new canopy above four new gasoline dispensing pumps. The project would also include the installation of perimeter landscaping along the street edges and a masonry wall adjacent to an existing house. The previously existing below-ground fuel tanks had been removed and are proposed to be replaced.

The existing building located on the site is proposed to serve as the attendant kiosk and include two auto service/repair bays. Access to the site is currently provided through four curb cuts which will be closed and replaced with two new 26-foot driveways located away from the corner. The gas station is proposed to operate during the standard business hours of 6 a.m. to midnight.

ENVIRONMENTAL REVIEW

An Initial Study was prepared for this project and a Mitigated Negative Declaration was adopted on May 8, 2002. The primary environmental issue addressed by the initial study was noise from the vehicle service/repair bays and potential impacts to adjacent residential uses. Mitigation measures that were identified in the noise report will be incorporated into the project including the provision of a 7-foot tall sound wall at the adjacent residential property line.

GENERAL PLAN CONFORMANCE

The proposed use is not consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC). The General Plan indicates that “active” commercial urban land uses can be deemed to conform to the General Plan even though it may not seemingly conform to the technical definition of the underlying non-commercial land use designation. In instances such as this, the General Plan does not address the issue of conformity where there is no active commercial use; however, the site is currently developed with commercial structures. Although the City has generally required General Plan conformance for the approval of rezonings and development permit applications, as a Charter City, San Jose is not actually required to make findings for General Plan conformance. More commonly, General Law cities are required to find General Plan Conformance. The San Jose Zoning Ordinance requires findings related to General Plan conformance as part of Site Development and Planned Development Permits, but does not make any such an explicit requirements for approval consideration of Conditional Use Permits.

A General Plan Amendment was recently filed for the adjacent property to the south Union Avenue, to facilitate an expansion of the existing medical supply business. The amendment proposes to change the General Plan land use designation from Medium Low Density Residential (8 DU/AC) to Neighborhood/Community Commercial. Staff will be proposing that this amendment proposal be expanded to include the project site so that the subject corner parcel does not become a small, discontinuous residentially-designated parcel surrounded by others with commercial designations. More discussion on this matter will be articulated in the staff report on the General Plan Amendment anticipated to be heard by the Planning Commission and City Council in late summer.

The proposed project does not facilitate a more intensive commercial use than had previously existed. The proposed use would not include any physical expansion of the building, number of service bays, pump islands or fuel dispensers compared to what originally existed on the site. Staff feels that the re-instatement of the gas station use is appropriate despite the technical non-conformance to the General Plan. Counterbalancing considerations to justify the proposal can be made in that: 1) the site has an existing gas station structure, 2) the site is located on a segment of Union Avenue surrounded exclusively by other active commercial uses, and 3) the site is located on a small corner parcel which, by itself, could not easily be developed with medium low density residential uses in a manner that would establish a good residential environment or context. Any potential expansion of the existing facility or use, however, beyond that which was originally conducted, should not be considered unless a subsequent General Plan Amendment to a commercial land use designation is approved.

ANALYSIS

The primary issues associated with this project include: 1) compliance to non-conforming provisions of the Zoning Ordinance, 2) conformance to the development standards of the Zoning Ordinance, 3) conformance to the Commercial Design Guidelines, and 4) conformance to the objectives of the Neighborhood Business Clusters Program.

Compliance to non-conforming uses provisions of the Zoning Ordinance

A legal non-conforming use and/or structure(s) is a use or structure which does not conform to the current requirements of the Zoning Ordinance but which was legally established. Provisions are included in the code which provide protections to property owners who developed their property in accordance with the applicable zoning regulation at the time of development. Lack of conformance to the General Plan, such as occurs in this proposal, does not establish a use as legal non-conforming. The subject use is *not* a legal non-conforming in that the Zoning Ordinance *does* allow gas station uses in the CP-Commercial Pedestrian Zoning District with a Conditional Use Permit. Additionally, the existing building conforms to the development standards of the CP-Commercial and is therefore not considered to be legal non-conforming.

Conformance to the development standards of the Zoning Ordinance

The Zoning Ordinance does not require a minimum front setback for structures adjacent to streets. In fact, new structures, unless otherwise “excepted” by the Director of Planning, are required to provide a setback of no more than 10 feet. Exceptions can be granted by the Director if the appropriate findings can be made that the allowance of a greater setback is justified in order to promote a more consistent pattern of development for the neighborhood. This project proposes a new canopy structure over the fuel pump dispensers. The canopy will have a front setback of 25 feet, which is consistent with the minimum building setback for other commercial structures fronting Union Avenue within the continuous commercial strip. This building setback will produce front perimeter landscape areas of 15 feet in width which are also consistent with the approximate average of other landscaped areas for other nearby commercial properties which range from zero to 25 feet. The rear building setback of 30 feet exceeds the minimum setback minimum requirement of 25 feet.

The proposed project, including landscape improvements that did not exist with the original gas station, will yield 12 on-site parking spaces. Based on the Zoning Ordinance parking requirements, only 11 parking spaces would be needed to fulfill the minimum requirements.

Conformance with the Commercial Design Guidelines

The proposed gas station will conform to all relevant aspects of the Commercial Design Guidelines (CDGs) in terms of site design, landscaping, vehicle circulation, residential interface and other requirements. The project is proposing to vacate surplus public right-of-way adjacent to Union Avenue so that all front perimeter landscaping is located on-site rather than in the right-of-way. No physical relocation of public improvements will be necessary. The vacation will provide greater consistency in the width of the right-of-way within this substantial segment of Union Avenue. Additionally, the net site area will be increased which will increase development opportunities upon the subsequent redevelopment of the site.

To improve the interface with the adjacent residential property to the west, the project will include a 10-foot landscaped buffer next to the property line. A 7-foot tall masonry wall adjacent to the residential property line is also proposed. Through vehicular circulation behind the existing building will be eliminated to minimize potential noise impacts.

The remodel of the existing building and provision of a new canopy will consist of finishing with cement plaster, crown moldings, and steel columns to update the appearance of the facility. The applicant has expressed interest in participating in the Façade Improvement Program (FIP) provided by the Redevelopment Agency in order for the architecture of the building to be consistent with the planned renovation of adjacent commercial buildings that are undergoing façade improvements. A Permit Adjustment may be required to revise the architecture of the proposed project if any further design modifications are proposed. The existing detached sign pole, which includes an illegal signboard, is located in the public right of way and will be removed. New signs will be reviewed under separate, subsequent sign permit adjustment and will conform to the current Sign Ordinance.

Conformance to Neighborhood Business Cluster (NBC) Objectives

The subject site is located within the Union and Camden Avenues Neighborhood Business Cluster as designated by the San Jose Redevelopment Agency. The purpose of the NBC is to revitalize small shopping centers which suffer from inadequate parking, poor lighting, lack of landscape, outdated architectural design features, and deteriorating structures, to make them more economically viable.

The project will allow development of the site with adequate parking, landscaping, and lighting. The project will be architecturally consistent with the adjacent commercial uses to the north and south which are also proposed to be updated. The proposed project is consistent with the objectives of the NBC in that it will develop the existing abandoned site, reduce blight, and provide a much-needed service to the neighborhood.

PUBLIC OUTREACH

Several community meetings were held over the past six months by the Redevelopment Agency to discuss upgrades to the retail buildings within the greater aforementioned neighborhood business cluster. Area residents and local business owners within the area indicated their preference for preservation of the area's existing commercial uses and structures instead of the construction of new commercial structures. There was substantial opposition to the notion of providing additional housing in this area. There were also concerns raised about the blighted conditions at the subject gas station site and issues related to vandalism and vagrancy.

Notices of the Mitigated Negative Declaration and the public hearings before the Planning Commission were distributed to owners and tenants of all properties within 500 feet of the subject site. Staff has been available to discuss the project with interested members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8.0 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CP-Commercial Pedestrian Zoning District.
3. A Mitigated Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
4. The site is currently developed with an abandoned gas station, including an existing 1,117 square foot building. The underground gas tanks and pump islands have been removed.
5. The existing gas station, originally built in 1952, has been vacant for approximately four years.
6. The existing building and site is in disrepair and is the source of significant blight in the neighborhood.
7. The site is located in the Camden/Union Neighborhood Business Cluster (NBC), which is one of six areas identified by the Redevelopment Agency demonstrating significant physical deterioration and economic decline.
8. The applicant is proposing to repair the existing 1,117 square-foot building, construct a new canopy above four gasoline dispensing pumps, install perimeter landscaping along the street edges and a masonry wall adjacent to an existing house, and replace the previously existing below ground fuel tanks.
9. The existing building located on the site is proposed to serve as the attendant kiosk and include two auto service/repair bays.
10. A conditional use permit is required for an outdoor use on properties in the CP-Commercial Pedestrian Zoning District (gasoline service station) that are within 150 feet of residentially zoned property.
11. The project site is adjacent to a single-family house.
12. The proposed gas station is proposed to operate during the standard business hours of 6 a.m. to midnight.
13. Other commercial properties in this area including several that have zoning designations of CP-Commercial Pedestrian are developed with buildings that have front setbacks substantially greater than 10 feet.
14. The Zoning Ordinance provides the authority to the Director of Planning to make an exception to the 10-foot maximum building setback as typically required in the CP-Commercial Pedestrian Zoning District if it is found that a greater setback would promote a more consistent pattern of development in the neighborhood.
15. The subject property is adjacent to a segment of Union Avenue right-of-way that is disproportionately wider than other areas of the same street.

16. The Department of Public Works has indicated that a right-of-way dimension consistent with adjacent properties is sufficient for adequate public traffic and pedestrian access.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is inconsistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. Although the City has generally required General Plan conformance for the approval of rezonings and development permit applications, as a Charter City, San Jose is not required to make findings for General Plan conformance.
3. The San Jose Zoning Ordinance requires findings related to General Plan conformance as part of Site Development and Planned Development Permits, but does not make such an explicit requirement for approval consideration of Conditional Use Permits.
4. The proposed project does not facilitate a more intensive use than had previously existed, would not include any physical expansion of the building, number of service bays, pump islands or fuel dispensers compared to that which originally existed on the site, and that the re-instatement of the gas station use is appropriate due to counterbalancing considerations.
5. A General Plan Amendment is on file for the adjacent property to the south on Union Avenue, to facilitate an expansion of the existing medical supply business. The amendment would change the land use designation from Medium Low Density Residential (8 DU/AC) to Neighborhood/Community Commercial. This amendment is proposed to be expanded to include the project site so that the subject corner parcel does not become a small, discontinuous residentially designated parcel surrounded by others with commercial designations.
6. Appropriate counterbalancing considerations, as noted above, are present to justify approval and reinstatement of a gas station use at the subject site despite lack of conformance to the specific General Plan land use designation of Medium Low Density Residential (8 DU/AC).
7. A front setback of greater than 10 feet for buildings on this site is appropriate to maintain consistency with the development pattern for this neighborhood.
8. The proposed project is in compliance with the Zoning Ordinance.
9. The proposed project is in compliance with the California Environmental Quality Act.
10. The proposed project is in compliance with the overall intent of the Commercial Design Guidelines (CDGs).
11. The proposed project will be compatible to and harmonious with the adjacent residential uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Remodel of Service Station for Sherwin Petroleum," dated April 30, 2002, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
6. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
7. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Light standards shall not exceed 12 feet above grade, or 8 feet above grade when adjacent to residential/use. All light fixtures under the proposed canopy shall be recessed or effectively screened to prevent the visibility of direct light source from off-site.

8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Roof Equipment.** All roof equipment shall be screened from view.
10. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
11. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
12. **Sign Design.** No signs are approved at this time, but shall be reviewed under separate sign permit adjustment. The partial detached sign structure located in the existing public right-of-way shall be removed prior to the issuance of a building permit.
13. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
14. **Street Trees.** Street trees as shown on approved plans shall be planted on the street frontage to the satisfaction of the Director of the Department of Streets and Traffic. A permit for this is required from the Department of Streets and Traffic, (408) 277-4373.
15. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-04437) to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* Storm drainage area fees, sanitary sewer connection fees and sewage treatment plant fees are due, less previous credits.
 - b. *Grading Permit.* A grading permit, which includes effective erosion control measures, is required.
 - c. *Street Trees.* Install street trees within the public right-of-way along both street frontages per City standards.
 - d. *Traffic.* The project shall install a “No Left-Turn Out” sign (installed on private property at the proposed driveway on Union Avenue. This will prohibit vehicles exiting the project site from performing a left-turn out onto Union Avenue.
 - e. *Driveways, Sidewalks, Curbs.* Applicant shall, at no cost to the City, construct driveway(s), close unused driveway(s), repair broken sidewalk(s), repair broken curbs and gutters, and/or repair street pavement.
 - f. *Electroliers.* Applicant shall, at no cost to the City, install or relocate electrolier(s) as required.

- g. *Minor Improvement Permit.* The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes plans, bonds/deposit certificate, insurance, and engineering and inspection fees.
- h. *Street Vacation.* A street vacation of surplus Union Avenue right-of-way is required prior to the issuance of an occupancy permit.

16. **Storm Water Quality Control Requirements.**

- a. *Inlet Filters.* The project developer shall install inlet filters in all new on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:
 - (1) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
 - (2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
 - (3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
 - (4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
 - (5) Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.
 - (6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
 - (7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.

17. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP01-12-107, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. Removal of existing detached sign structure. The existing detached sign structure within the Union Avenue right-of-way shall be removed prior to the issuance of a building permit.
 - d. *Street Vacation.* The street vacation of surplus Union Avenue right-of-way is required in accordance with
 - e. condition 15.h.
18. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
19. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
20. **Fire Flow.** Required fire flow for the site is 2,000 gpm, or as otherwise approved in writing by the Fire Chief.
21. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
22. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
23. **Restrooms, Air and Water.** The restrooms, air and water shall be kept available for public use during all hours of operation of the gas station.

24. **Kiosk Booths.** For security, the attendant kiosk booth shall be constructed of bullet-resistant glass and material and shall be equipped with a telephone and automatic remote locks controlling access to public restrooms.
25. **Hours.** This facility shall be limited to operation between the hours of 6 a.m. to 12 midnight, unless a Conditional Use Permit is approved by the City for other hours of operation.
26. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
27. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement. Anti-graffiti paint shall be used on the masonry walls, attendant building and doors.
28. **Permit Adjustment.** A permit adjustment is required for proposed changes to the architecture. Any changes proposed for the architecture shall be architecturally consistent with the adjacent uses proposed to participate in the Façade Improvement Program (FIP) of the Redevelopment Agency.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

c: Applicant, Owner, Developer
Building Division (2)
Engineering Services